

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 98-0733
Gross Income Tax
For The Years: 1993, 1994, 1995

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ISSUES

I. Gross Income Tax – Intangibles

Authority: IC 6-2.1-2-3, IC 6-2.1-2-4, IC 6-2.1-2-5, IC 6-2.1-1-9, IC 6-2.1-2-1, IC 6-2.1-1-12.

The Taxpayer protests the Department's assessment of gross income tax on lease income.

STATEMENT OF FACTS

The Taxpayer is an out-of-state subsidiary corporation that leases and finances trucks produced by its parent corporation. The Taxpayer provides its customers via independent dealers with financing and leasing options when the customers make their transactions. The Taxpayer maintains one employee in Indiana that works out of his home and is responsible for solicitation in Indiana and neighboring states. The employee has no authority to approve contracts. The accounting, approval, and collection of the contracts take place out-of-state. Taxpayer was assessed Indiana gross income tax during audit.

After the initial hearing and Letter of Finding, the Department granted a rehearing with regards to: 1) whether interest should have been excluded from the sales factor numerator in determining adjusted gross income, and; 2) whether the low rate of gross income tax should be applied to receipts from Taxpayer's sales of vehicles from inventory no longer held for leasing. More facts will be provided as necessary.

I. Gross Income Tax: Intangibles

DISCUSSION

Taxpayer provides its customers, via independent dealers, with financing and leasing options. During the audit, Taxpayer was determined to be improperly reporting income tax on a gross earnings basis and that the entire gross receipts from the revenue producing property located within Indiana was subject to the gross income tax.

The Department granted a rehearing with regards to: 1) whether interest should have been excluded from the sales factor numerator in determining adjusted gross income, and; 2) whether the low rate of gross income tax should be applied to receipts from Taxpayer's sales of vehicles from inventory no longer held for leasing.

Taxpayer contends that the original Letter of Findings should have addressed whether interest should have been excluded from the sales factor in computing adjusted gross income. Taxpayer makes no mention of this issue in their original protest letter and has not briefed the Department with regards to this matter. Hence, this issue is beyond the scope of the original Letter of Finding and will not be addressed in the Supplemental Letter of Finding.

Taxpayer states that the low rate of gross income tax should be applied to receipts from Taxpayer's sales of vehicles from inventory no longer held for leasing. Pursuant to IC 6-2.1-2-3:

- (a) The receipt of gross income from transactions described in section 4 [IC 6-2.1-2-4] of this chapter is subject to a tax rate of three-tenths of one percent (0.3%).
- (b) The receipt of gross income from transactions described in section 5 [IC 6-2.1-2-5] of this chapter is subject to a tax rate of one and two-tenths percent (1.2%)

IC 6-2.1-2-4 applies the low rate (0.3%) in part to wholesale sales or when the Taxpayer is selling at retail. IC 6-2.1-2-5 states in relevant part that the high rate applies to qualified lessors (*See* IC 6-2.1-1-9) and to any activity not described in IC 6-2.1-2-4. Taxpayer was found not to be a qualified lessor in the original Letter of Finding.

IC 6-2.1-2-1(b)(1) states:

“Selling at retail” means a transaction in which a retail merchant in the ordinary course of his regularly conducted business transfers the ownership of tangible personal property to another, conditionally or otherwise, for a consideration if:

- (A) the retail merchant had previously acquired that tangible personal property for the purpose of reselling it; and
- (B) the transferee acquiring the property does not acquire the tangible personal property for the purpose of making a wholesale sale.

IC 6-2.1-1-12 defines a retail merchant as “a taxpayer who is regularly and occupationally engaged in the business of purchasing tangible personal property and providing the tangible personal property to his customers at a fixed and established place of business.”

Also, IC 6-2.1-2-1(c)(1) in relevant part states that:

“Wholesale sales” means any sale described in this subsection in which the purchaser is not a division, subdivision, agency, instrumentality, unit, or department of government:

- (A) Sales of tangible personal property (except capital assets or depreciable assets of the seller) for resale in the form in which it was purchased.

Taxpayer is an out-of-state subsidiary corporation that leases and finances trucks produced by its parent corporation. They provide their customers via independent dealers with financing and leasing options when the customers make their transactions.

Taxpayer has not demonstrated that it is a retail merchant selling at retail. Furthermore, Taxpayer has not provided evidence that it is not selling depreciable assets or that the transactions should be categorized as wholesale sales. Thus, the sale of vehicles no longer held for leasing are subject to the high rate in accordance with IC 6-2.1-2-5.

FINDING

The Taxpayer's protest is respectfully denied.